

Message Text

PAGE 01 STATE 220979

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FOLLOWING REPEAT BONN 15015 ACTION SECSTATE 12 SEP 75

QUOTE

LIMITED OFFICIAL USE BONN 15015

PASS TREASURY FOR ASSISTANT SECRETARY HICKMAN AND SYVRUD

E.O. 11652: N/A

TAGS: EFIN, GW

SUBJECT: GERMAN CORPORATE TAX REFORM : DOUBLE
TAXATION ASPECTS

1. THE GERMAN MINISTRY OF FINANCE HAS ASKED THAT WE
OBTAIN CLARIFICATION ON THE FOLLOWING QUESTIONS IN
CONNECTION WITH A STATEMENT ASSISTANT SECRETARY HICKMAN
MADE, ACCORDING TO THE FINANCE MINISTRY, IN THE OECD
FISCAL COMMITTEE LAST JUNE TO THE EFFECT THAT THE US
EXPECTS COUNTRIES WITH A SYSTEM WHICH CREDITS CORPORATE
TAX PAID AGAINST INDIVIDUAL INCOME TAXES TO GIVE
THE FULL TAX CREDIT OR REBATE INVOLVED ALSO TO US

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PAGE 02 STATE 220979

RESIDENTS WITHIN THE FRAMEWORK OF APPLICABLE DOUBLE
TAXATION TREATIES. ACCORDING TO THE FINANCE MINISTRY,
ASSISTANT SECRETARY HICKMAN ALSO INDICATED THAT SUCH
CREDITS SHOULD ALSO APPLY IN THE CASE OF US PARENT
COMPANIES AND SHOULD NOT BE SUBJECT TO ANY SPECIAL
PROVISIONS REGARDING THE FURTHER DISTRIBUTION OF

DIVIDENDS RECEIVED BY SUCH PARENT COMPANIES FROM THEIR FOREIGN DAUGHTERS:

(L) DOES THE ABOVE US POSITION APPLY ONLY TO COUNTRIES GIVING A PARTIAL TAX CREDIT OR ALSO TO COUNTRIES GRANTING A FULL CREDIT ON CORPORATE TAXES PAID ON DISTRIBUTED DIVIDENDS SUCH AS CONTEMPLATED IN THE GERMAN TAX REFORM.

(2) IN WHAT RESPECT, IF ANY, HAS THE US POSITION OUTLINED BY ASSISTANT SECRETARY HICKMAN CHANGED AS A RESULT OF THE PROPOSAL BY SECRETARY SIMON OF A US CORPORATE TAX REFORM WHICH ENVISAGES NO SUCH US TAX CREDIT FOR REBATE TO FOREIGN RESIDENTS?

(3) WHAT IS THE US POSITION IN REGARD TO WITH-HOLDING TAXES (SUCH AS THE GERMAN KAPITALERTRAGSSTEUER WITHHELD FROM DIVIDENDS PAID TO US RESIDENTS WHICH ARE CREDITED AGAINST GERMAN INDIVIDUAL INCOME TAXES, IF ANY)?

2. AS INDICATED IN BONN 13538, WE HAVE ALSO TAKEN THE OPPORTUNITY TO COMPARE WITH THE GERMAN MINISTRY OF FINANCE EXPERTS THE CALCULATIONS WE MADE ON THE IMPACT OF THE GERMAN CORPORATE TAX REFORM AND OUTLINED IN DETAIL IN BONN 03841. THE FINANCE MINISTRY EXPERTS GENERALLY CONFIRMED THE ACCURACY OF OUR CALCULATIONS SUBJECT TO THE FOLLOWING COMMENTS: (A) IN THEIR CALCULATIONS THEY CALCULATE THE INCOME TAX ELEMENT OF THE GERMAN TRADE TAX TO BE AN AVERAGE OF 15 PERCENT INSTEAD OF THE 13 PERCENT WE HAVE ASSUMED AND THE CURRENT GERMAN CORPORATE INCOME TAX AT 52.5 PERCENT INSTEAD OF THE 52 PERCENT USED IN OUR CALCULATIONS. (B) THEY FEEL THAT IN THE CASE OF DISTRIBUTED EARNINGS A FURTHER COMPARISON HAS TO BE MADE IN THE CASE OF LIMITED OFFICIAL USE
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PAGE 03 STATE 220979

THE US PARENT WHO CAN EITHER PASS ON THE DISTRIBUTED PROFITS TO ITS INDIVIDUAL SHAREHOLDERS (WHERE IT BECOMES SUBJECT TO US INDIVIDUAL INCOME TAXES IN THE SAME WAY AS EARNINGS DISTRIBUTED TO GERMAN INDIVIDUAL TAXPAYERS BECOME SUBJECT TO THE GERMAN INDIVIDUAL INCOME TAX) OR WHERE THE US PARENT CAN RETAIN THE DIVIDENDS FROM THEIR GERMAN DAUGHTER AND THUS AVOID ANY FURTHER TAXES ON THEM, WHILE THE GERMAN DISTRIBUTED PROFIT WILL BE SUBJECT IN ANY CASE TO AN INDIVIDUAL INCOME TAX. (C) PROVISION SHOULD BE MADE IN THE CALCULATIONS FOR SPECIAL CIRCUMSTANCES WHERE US PARENT COMPANIES CAN AVOID FURTHER US CORPORATE INCOME TAXES ON DIVIDENDS RECEIVED FROM GERMAN DAUGHTERS EITHER BECAUSE THESE DIVIDENDS CAN BE OFFSET

AGAINST TAX CREDITS FROM
OTHER FOREIGN OPERATIONS OR
CAN BE TREATED AS STOCK DIVIDENDS. (D) FINALLY,
THE GERMAN OFFICIALS RAISE THE GENERAL
PHILOSOPHICAL QUESTION THAT IN ALL APPLICABLE CASES
WHERE THE HIGHER TAX ON US DAUGHTERS RESULTS FROM
US RATHER THAN FROM GERMAN TAXES THE REMEDY SHOULD
LIE IN THE US TAX SYSTEM. WE POINTED OUT THAT WE WERE
SIMPLY ATTEMPTING TO CALCULATE THE INCREASED BURDEN
ON US DAUGHTER COMPANIES FROM A CHANGE IN TAX LAWS
AND THAT THESE CHANGES WERE IN THE APPLICABLE GERMAN
TAX LAWS.
HILLENBRAND

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